



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2022

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P. (MD) Nos. 3810 and 3813 of 2018

and

WMP. (MD) Nos. 3942, 3939, 15403 and 15407 of 2018

and 13516, & 13590 of 2021

R. Thirupathi,
Assistant (Accountant),
Madurai East Panchayat Union,
Chokkikulam,
Madurai -2.

...Petitioner
in W. P. (MD) No.3810 of 2018

P. Kumaravel,
Assistant,
Thirumangalam Panchayat Union Office,
Thirumangalam,
Madurai.

...Petitioner
in W. P. (MD) No.3813 of 2018

Vs

1. The State of Tamil Nadu,
Represented by its Secretary
to the Government,
Rural Development & Panchayat Raj Department,
Secretariat,
Chennai -2.

2. The Director,
Rural Development & Panchayat Raj Department,
Panagal Maligai,
Saidapet,
Chennai - 15.

3. The District Collector,
Madurai District,
Madurai.

...Respondents 1 to 3 in all Wps.



4. The Block Development Officer (Block Panchayat),
O/o. The Block Development Office,
Madurai East Panchayat Union,
China Chokkikulam,
Madurai.

...fourth respondent
in W. P.(MD) No.3810 of 2018

WEB COPY

5. The Block Development Officer (Village Panchayat),
O/o. The Block Development Office,
Thirumangalam Panchayat Union Office,
Thirumangalam,
Madurai.

... fourth respondent
in W. P.(MD) No.3813 of 2018

Prayer in W.P.(MD) No.3810 of 2018: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of certiorarified mandamus, calling for the records relating to the impugned order passed by the second respondent in his proceedings No. Na.Ka.100041/2017/P3 dated 17.01.2018 (Served to the petitioner on 08.02.2018) and quash the same as illegal and consequentially to direct the respondents to promote the petitioner retrospectively as Junior Assistant from the date on which his immediate junior was promoted and pass orders.

Prayer in W.P.(MD) No.3813 of 2018: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of certiorarified mandamus, calling for the records relating to the impugned order passed by the second respondent in his proceedings No. Na.Ka.100041/2017/P3 dated 17.01.2018 (Served to the petitioner on 08.02.2018) confirming the order passed by the third respondent vide his proceedings Na.Ka.No.04/2016/U.V.2 dated 13.06.2016 and quash the same as illegal and consequentially to direct the respondents to promote the petitioner retrospectively as Junior Assistant from the date on which his immediate junior was promoted and pass orders.

For Petitioners : Mr. M.Ajmal Khan
Senior Counsel
for M/s. Ajmal Associates

For Respondents : Mr. Veera Kathiravan,
Additional Advocate General,
Assisted by Mr. A.K. Manikkam,
Special Government Pleader

COMMON ORDER

These two writ petitions have been filed by two individuals who were earlier holding the posts of Panchayat Assistants. The
<https://hcservices.ecourts.gov.in/hcservices/>



prevalent Rules provided for absorption of 10 % of Panchayat Assistant to the post of Junior Assistant in the Panchayat Union.

2. The 10 % to be filled in where to be on recommendation by the Director, Rural Development and Panchayat Raj Department and the appointment is to be by concurrence of The Tamil Nadu Public Service Commission.

3. In the present case, the empanelment in question relates to the period 2005-2006, the crucial date for which is 15.03.2005. The petitioners have ultimately come to be empaneled for the period in question by order dated 04.08.2011 and appointed as Junior Assistant under the same order.

4. They challenge this stating that their appointment ought to have been simultaneous with their juniors, two individuals by name Balakumar and Ramamoorthy. Admittedly, the petitioners stood at higher seniority than the aforesaid two individuals in the fixation of seniority for the year 2005-2006, the year in question.

5. Charge memo was issued to the petitioners on 09.02.2005 and 01.02.2005 and for this reason, their empanelment was not originally considered for the year in question. The charge memos came to be challenged by the petitioners along with other identically placed Panchayat Assistants in W.P.(MD) No. 966 of 2005.

6. By order dated 24.03.2006, a learned Single Judge of this Court allowed the writ petitions holding that the charge memo was inordinately delayed, appeared to have been issued with a closed mind and for extraneous reasons.

7. What has transpired thereafter has a bearing on the decision to be taken in deciding the case of the petitioners. Though the charge memos were quashed as early as on 24.03.2006, the juniors of the petitioners came to be promoted by order dated 10.03.2008 and the names of the petitioners do not figure in the aforesaid order.

8. Thus, though the fact that the juniors of the petitioners have been preferred over the petitioners was known to them even as early as on 10.03.2008, this order remains unchallenged. The petitioners made representations on 08.04.2009 and 09.04.2009 seeking fixation of seniority and consequential promotion, in light of the quashing of the charge memos on 24.03.2006.

9. The representations of the petitioners was forwarded to the superior authority under proceedings bearing No. 585 of 2008 dated 09.04.2009 and proceedings bearing No.1330 of 2009 dated 10.04.2009.

10. While so, the panel for the year 2007-2008 came to be drawn on 04.08.2011 as noticed earlier and the petitioners were both empaneled and simultaneously promoted on 04.08.2011. These



proceedings have also not been challenged by the petitioners who could well have done so had they been of the view that their empanelment ought to have been for previous period and from an anterior date.

11. The petitioners' case in these writ petitions is that with the quashing of the charge memos dated 09.02.2005 and 01.02.2005, the entirety of the events relating to the charge memos stand effaced and status quo ante should be restored thus entitling them to empanelment and promotion for the year 2005-2006 itself.

12. For this proposition, they rely on various decisions of this court to which I will not advert seeing as this is a fairly well settled proposition in law.

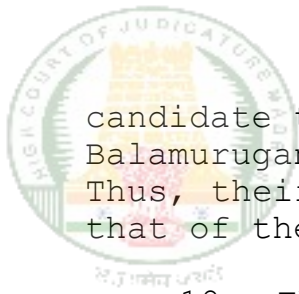
13. However, an added feature in the present case is that G.O.Ms. No. 240 of 2000 dated 07.09.2000 provides for the enabling mechanism for absorption of Panchayat Assistants to the post of Junior Assistant. This is the beneficial G.O. in terms of which the absorption of the petitioners to the post of Junior Assistant would itself become a reality.

14. The aforesaid G.O. contains a set of guidelines which provides for the parameters to be adopted while effecting such absorption. The G.O. states that one of the bars to absorption to the post of Village Assistant would be the pendency of charges as in the present case.

15. That apart, it also states that the conduct of the candidates to be considered for promotion must be borne in mind. The aforesaid G.O., is one of the sheet anchors of the States' defence to state that notwithstanding with the quashing of the charge memos, the conduct of the petitioners has also been found not to be fully satisfactory.

16. For this purpose, reference is made to the fact that even after the quashing of the charge memos, the petitioners had acquiesced to the factum of loss of revenue caused to the State by virtue of their negligence in rendition of duties and, admittedly made good the revenue loss. The amounts had been remitted in 4 instalments between the period 15th of April and 10th of August 2009. It is only upon such recovery having been effected that the petitioners were found fit for empanelment. It is thus that their names were not empaneled along with their juniors in 2008 itself, but only subsequently in 2011, State would submit.

17. That apart, the impugned order which rejects their representations seeking parity with their juniors takes note of the fact that the juniors have been promoted as early as in 2008 whereas the petitioners have been promoted only in 2011. The fixation of the



candidate to the post of Junior Assistant and, in the present case Balamurugan and Ramamoorthy were promoted as early as on 10.03.2008. Thus, their seniority has rightly been determined as being higher to that of the petitioners who were promoted only on 04.08.2011.

18. There is no dispute put forth as regards this settled proposition in law by the petitioners, and rightly so. The only argument advanced is in regard to the consequence that must be attributed to the quashing of the charge memo by restoring the original seniority of the petitioners. While this may be the normal understanding of the situation, the petitioners, in the present case, would not be entitled to this benefit.

19. This is for the reason that the petitioners have consistently accepted the promotion both of their juniors as well as of their own and having done so cannot now seek to upset the apple cart. The trajectory of events reveals substantial elapse of time over the years and to establish this, I will set out the dates and events as they present themselves before me.

i) The charge memos were quashed by this court on 24.03.2006

ii) The juniors of the petitioners have been promoted on 10.03.2008. This order has not been challenged.

iii) On 08.04.2009 and 9.04.2009, representations are filed by the petitioners seeking seniority.

iv) On 09.04.2009 and 10.04.2009, the representations aforesaid were forwarded to the superior authority.

v) There has been no move on the part of the petitioners to pursue their representations seeking fixation of seniority.

vi) The petitioners were promoted on 04.08.2011 after empanelment for the period 2007-2008. This order has also not been challenged. Had the petitioners believed that they were entitled for empanelment for the period 2005-2006, this order ought to have been challenged as it prejudices their entitlements.

vii) Thereafter, and significantly there has been no move to question any of the aforesaid events till 06.04.2015 when the petitioners file representations seeking seniority over and above Balamurugan and Ramamoorthy. These representations have come to be rejected vide impugned order leading to the filing of these writ petitions.

20. The sequence of dates and events set out above make it more than apparent to me that the petitioners have, at no point in time, sought to question the fixation of their seniority. In such an event, I am of the categorical and considered view that the petitioners cannot be permitted to upset the settled seniority that has been in vogue and prevalent since 2008, by way of a writ petition filed a decade later.

21. In light of the discussion as aforesaid, these writ petitions are liable to be dismissed confirming the impugned orders



WEB COPY

and I do so. Consequently, connected miscellaneous petitions are closed and there shall be no order as to costs.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mnr

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned

To

1. The Secretary to the Government,
The State of Tamil Nadu,
Rural Development & Panchayat Raj Department,
Secretariat, Chennai -2.
2. The Director,
Rural Development & Panchayat Raj Department,
Panagal Maligai, Saidapet, Chennai - 15.
3. The District Collector,
Madurai District, Madurai.
4. The Block Development Officer (Block Panchayat),
O/o. The Block Development Office,
Madurai East Panchayat Union,
China Chokkikulam, Madurai.
5. The Block Development Officer (Village Panchayat),
O/o. The Block Development Office,
Thirumangalam Panchayat Union Office,
Thirumangalam, Madurai.

+2CC to M/s.AJMAL ASSOCIATES, Advocate(SR-139,140[F] dated 04/01/2022)

+1 CC to M/s.SPL GP (SR-371[F] dated 05/01/2022)

W.P. (MD) Nos. 3810 and 3813 of 2018 and
WMP. (MD) Nos. 3942, 3939, 15403 and 15407 of 2018
and 13516, & 13590 of 2021
04.01.2022